

105TH CONGRESS
2D SESSION

H. R. 3888

AN ACT

To amend the Communications Act of 1934 to improve the protection of consumers against “slamming” by telecommunications carriers, and for other purposes.

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To amend the Communications Act of 1934 to improve the protection of consumers against “slamming” by telecommunications carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Telecommunications
3 Competition and Consumer Protection Act of 1998”.

4 **TITLE I—SLAMMING**

5 **SEC. 101. IMPROVED PROTECTION FOR CONSUMERS.**

6 (a) CONSUMER PROTECTION PRACTICES.—Section
7 258 of the Communications Act of 1934 (47 U.S.C. 258)
8 is amended to read as follows:

9 **“SEC. 258. ILLEGAL CHANGES IN SUBSCRIBER SELECTIONS**
10 **OF CARRIERS.**

11 “(a) ALTERNATIVE MODES OF REGULATION.—

12 “(1) INDUSTRY/COMMISSION CODE.—Within
13 180 days after the date of enactment of the Tele-
14 communications Competition and Consumer Protec-
15 tion Act of 1998, the Commission, after consulting
16 with the Federal Trade Commission and representa-
17 tives of telecommunications carriers providing tele-
18 phone toll service and telephone exchange service,
19 State commissions, and consumers, and considering
20 any proposals developed by such representatives,
21 shall prescribe, after notice and public comment and
22 in accordance with subsection (b), a Code of Sub-
23 scriber Protection Practices (hereinafter in this sec-
24 tion referred as the ‘Code’) governing changes in a
25 subscriber’s selection of a provider of telephone ex-
26 change service or telephone toll service.

1 “(2) OBLIGATION TO COMPLY.—No tele-
 2 communications carrier (including a reseller of tele-
 3 communications services) shall submit or execute a
 4 change in a subscriber’s selection of a provider of
 5 telephone exchange service or telephone toll service
 6 except in accordance with—

7 “(A) the Code, if such carrier elects to
 8 comply with the Code in accordance with sub-
 9 section (b)(2); or

10 “(B) the requirements of subsection (c),
 11 if—

12 “(i) the carrier does not elect to com-
 13 ply with the Code under subsection (b)(2);
 14 or

15 “(ii) such election is revoked or with-
 16 drawn.

17 “(b) MINIMUM PROVISIONS OF THE CODE.—

18 “(1) SUBSCRIBER PROTECTION PRACTICES.—
 19 The Code required by subsection (a)(1) shall include
 20 provisions addressing the following:

21 “(A) IN GENERAL.—A telecommunications
 22 carrier (including a reseller of telecommuni-
 23 cations services) electing to comply with the
 24 Code shall submit or execute a change in a sub-
 25 scriber’s selection of a provider of telephone ex-

1 change service or telephone toll service only in
2 accordance with the provisions of the Code.

3 “(B) NEGATIVE OPTION.—A telecommuni-
4 cations carrier shall not use negative option
5 marketing.

6 “(C) VERIFICATION.—A telecommuni-
7 cations carrier that submits the change to an
8 executing carrier, or that is both a submitting
9 and an executing carrier, shall verify the sub-
10 scriber’s selection of the carrier in accordance
11 with procedures specified in the Code.

12 “(D) UNFAIR AND DECEPTIVE ACTS AND
13 PRACTICES.—No telecommunications carrier,
14 nor any person acting on behalf of any such
15 carrier, shall engage in any unfair or deceptive
16 acts or practices in connection with the solicita-
17 tion of a change in a subscriber’s selection of
18 a telecommunications carrier.

19 “(E) NOTIFICATION AND RIGHTS.—A tele-
20 communications carrier shall provide timely and
21 accurate notification to the subscriber in ac-
22 cordance with procedures specified in the Code.

23 “(F) SLAMMING LIABILITY AND REM-
24 EDIES.—

1 “(i) REQUIRED REIMBURSEMENT AND
2 CREDIT.—A telecommunications carrier
3 that has improperly changed the subscrib-
4 er’s selection of a telecommunications car-
5 rier without authorization, shall at a mini-
6 mum—

7 “(I) reimburse the subscriber for
8 the fees associated with switching the
9 subscriber back to their original car-
10 rier; and

11 “(II) provide a credit for any
12 telecommunications charges incurred
13 by the subscriber during the period,
14 not to exceed 30 days, while that sub-
15 scriber was improperly presubscribed.

16 “(ii) PROCEDURES.—The Code shall
17 prescribe procedures by which—

18 “(I) a subscriber may make an
19 allegation of a violation under clause
20 (i);

21 “(II) the telecommunications car-
22 rier may rebut such allegation;

23 “(III) the subscriber may, with-
24 out undue delay, burden, or expense,
25 challenge the rebuttal; and

1 “(IV) resolve any administrative
2 review of such an allegation within 75
3 days after receipt of an appeal.

4 “(G) RECORDKEEPING.—A telecommuni-
5 cations carrier shall make and maintain a
6 record of the verification process and shall pro-
7 vide a copy to the subscriber immediately upon
8 request.

9 “(H) QUALITY CONTROL.—A telecommuni-
10 cations carrier shall institute a quality control
11 program to prevent inadvertent changes in a
12 subscriber’s selection of a carrier.

13 “(I) INDEPENDENT AUDITS.—A tele-
14 communications carrier shall provide the Com-
15 mission with an independent audit regarding its
16 compliance with the Code at intervals pre-
17 scribed by the Code. The Commission may re-
18 quire a telecommunications carrier to provide
19 an independent audit on a more frequent basis
20 if there is evidence that such telecommuni-
21 cations carrier is violating the Code.

22 “(2) ELECTION BY CARRIERS.—Each tele-
23 communications carrier electing to comply with the
24 Code shall file with the Commission within 20 days
25 after the adoption of the Code, or within 20 days

1 after commencing operations as a telecommuni-
2 cations carrier, a statement electing the Code to gov-
3 ern such carrier's submission or execution of a
4 change in a customer's selection of a provider of
5 telephone exchange service or telephone toll service.
6 Such election by a carrier may not be revoked or
7 withdrawn unless the Commission finds that there is
8 good cause therefor, including a determination that
9 the carrier has failed to adhere in good faith to the
10 applicable provisions of the Code, and that the rev-
11 ocation or withdrawal is in the public interest. Any
12 telecommunications carrier that fails to elect to com-
13 ply with the Code shall be deemed to have elected
14 to be governed by the subsection (c) and the Com-
15 mission's regulations thereunder.

16 “(c) REGULATIONS OF CARRIERS NOT COMPLYING
17 WITH CODE.—

18 “(1) IN GENERAL.—A telecommunications car-
19 rier (including a reseller of telecommunications serv-
20 ices) that has not elected to comply with the Code
21 under subsection (b), or as to which the election has
22 been withdrawn or revoked, shall not submit or exe-
23 cute a change in a subscriber's selection of a pro-
24 vider of telephone exchange service or telephone toll
25 service except in accordance with this subsection and

1 such verification procedures as the Commission shall
2 prescribe.

3 “(2) VERIFICATION.—

4 “(A) IN GENERAL.—In order to verify a
5 subscriber’s selection of a telephone exchange
6 service or telephone toll service provider under
7 this subsection, the telecommunications carrier
8 submitting the change to an executing carrier
9 shall, at a minimum, require the subscriber—

10 “(i) to affirm that the subscriber is
11 authorized to select the provider of that
12 service for the telephone number in ques-
13 tion;

14 “(ii) to acknowledge the type of serv-
15 ice to be changed as a result of the selec-
16 tion;

17 “(iii) to affirm the subscriber’s intent
18 to select the provider as the provider of
19 that service;

20 “(iv) to acknowledge that the selection
21 of the provider will result in a change in
22 providers of that service; and

23 “(v) to provide such other information
24 as the Commission considers appropriate
25 for the protection of the subscriber.

1 “(B) ADDITIONAL REQUIREMENTS.—The
2 procedures prescribed by the Commission to
3 verify a subscriber’s selection of a provider
4 shall—

5 “(i) preclude the use of negative op-
6 tion marketing;

7 “(ii) provide for a complete copy of
8 verification of a change in telephone ex-
9 change service or telephone toll service pro-
10 vider in oral, written, or electronic form;

11 “(iii) require the retention of such
12 verification in such manner and form and
13 for such time as the Commission considers
14 appropriate;

15 “(iv) mandate that verification occur
16 in the same language as that in which the
17 change was solicited; and

18 “(v) provide for verification to be
19 made available to a subscriber on request.

20 “(C) NOTICE TO SUBSCRIBER.—Whenever
21 a telecommunication carrier submits a change
22 in a subscriber’s selection of a provider of tele-
23 phone exchange service or telephone toll service,
24 such telecommunications carrier shall clearly
25 notify the subscriber in writing, not more than

1 15 days after the change is submitted to the
2 executing carrier—

3 “(i) of the subscriber’s new carrier;
4 and

5 “(ii) that the subscriber may request
6 information regarding the date on which
7 the change was agreed to and the name of
8 the individual who authorized the change.

9 “(3) LIABILITY FOR VIOLATIONS.—

10 “(A) NOTIFICATION OF CHANGE.—The
11 first bill issued after the effective date of a
12 change in a subscriber’s provider of telephone
13 exchange service or telephone toll service by the
14 executing carrier for such change shall—

15 “(i) prominently disclose the change
16 in provider and the effective date of such
17 change;

18 “(ii) contain the name and toll-free
19 number of any telecommunications carrier
20 for such new service; and

21 “(iii) direct the subscriber to contact
22 the executing carrier if the subscriber be-
23 lieves that such change was not authorized
24 and that the change was made in violation

1 of this subsection, and contain the toll-free
2 number by which to make such contact.

3 “(B) AUTOMATIC SWITCH-BACK OF SERV-
4 ICE AND CREDIT TO CONSUMER OF CHARGES.—

5 “(i) OBLIGATIONS OF EXECUTING
6 CARRIER.—If a subscriber of telephone ex-
7 change service or telephone toll service
8 makes an allegation, orally or in writing, to
9 the executing carrier that a violation of
10 this subsection has occurred with respect
11 to such subscriber—

12 “(I) the executing carrier shall,
13 without charge to the subscriber, exe-
14 cute an immediate change in the pro-
15 vider of the telephone service that is
16 the subject of the allegation to restore
17 the previous provider of such service
18 for the subscriber;

19 “(II) the executing carrier shall
20 provide an immediate credit to the
21 subscriber’s account for any charges
22 for executing the original change of
23 service provider;

24 “(III) if the executing carrier
25 conducts billing for the carrier that is

1 the subject of the allegation, the exe-
2 cuting carrier shall provide an imme-
3 diate credit to the subscriber's ac-
4 count for such service, in an amount
5 equal to any charges for the telephone
6 service that is the subject of the alle-
7 gation incurred during the period—

8 “(aa) beginning upon the
9 date of the change of service that
10 is the subject of the allegation;
11 and

12 “(bb) ending on the earlier
13 of the date that the subscriber is
14 restored to the previous provider,
15 or 30 days after the date the bill
16 described in subparagraph (A) is
17 issued; and

18 “(IV) the executing carrier shall
19 recover the costs of executing the
20 change in provider to restore the pre-
21 vious provider, and any credits pro-
22 vided under subclause (II) and (III),
23 by recourse to the provider that is the
24 subject of the allegation.

1 “(ii) OBLIGATIONS OF CARRIERS NOT
2 BILLING THROUGH EXECUTING CAR-
3 RIERS.—If a subscriber of telephone ex-
4 change service or telephone toll service
5 transmits, orally or in writing, to any car-
6 rier that does not use an executing carrier
7 to conduct billing an allegation that a vio-
8 lation of this subsection has occurred with
9 respect to such subscriber, the carrier shall
10 provide an immediate credit to the sub-
11 scriber’s account for such service, and the
12 subscriber shall, except as provided in sub-
13 paragraph (C)(iii), be discharged from li-
14 ability, for an amount equal to any charges
15 for the telephone service that is the subject
16 of the allegation incurred during the pe-
17 riod—

18 “(I) beginning upon the date of
19 the change of service that is the sub-
20 ject of the allegation; and

21 “(II) ending on the earlier of the
22 date that the subscriber is restored to
23 the previous provider, or 30 days after
24 the date the bill described in para-
25 graph (1) is issued.

1 “(iii) TIME LIMITATION.—This sub-
2 paragraph shall apply only to allegations
3 made by subscribers before the expiration
4 of the 1-year period that begins on the
5 issuance of the bill described in subpara-
6 graph (A).

7 “(C) PROCEDURE FOR CARRIER REM-
8 EDY.—

9 “(i) IN GENERAL.—The Commission
10 shall, by rule, establish a procedure for
11 rendering determinations with respect to
12 violations of this subsection. Such proce-
13 dure shall permit such determinations to
14 be made upon the filing of (I) a complaint
15 by a telecommunications carrier that was
16 providing telephone exchange service or
17 telephone toll service to a subscriber before
18 the occurrence of an alleged violation, and
19 seeking damages under clause (ii), or (II)
20 a complaint by a telecommunications car-
21 rier that was providing services after the
22 alleged violation, and seeking a reinstatement
23 of charges under clause (iii). Either
24 such complaint shall be filed not later than
25 6 months after the date on which any sub-

1 subscriber whose allegation is included in the
2 complaint submitted an allegation of the
3 violation to the executing carrier under
4 subparagraph (B)(ii). Either such com-
5 plaint may seek determinations under this
6 paragraph with respect to multiple alleged
7 violations in accordance with such proce-
8 dures as the Commission shall establish in
9 the rules prescribed under this subpara-
10 graph.

11 “(ii) DETERMINATION OF VIOLATION
12 AND REMEDIES.—In a proceeding under
13 this subparagraph, if the Commission de-
14 termines that a violation of this subsection
15 has occurred, other than an inadvertent or
16 unintentional violation, the Commission
17 shall award damages—

18 “(I) to the telecommunications
19 carrier filing the complaint, in an
20 amount equal to the sum of (aa) the
21 gross amount of charges that the car-
22 rier would have received from the sub-
23 scriber during the violation, and (bb)
24 \$500 per violation; and

1 “(II) to the subscriber that was
2 subjected to the violation, in the
3 amount of \$500.

4 “(iii) DETERMINATION OF NO VIOLA-
5 TION.—If the Commission determines that
6 a violation of this subsection has not oc-
7 curred, the Commission shall order that
8 any credit provided to the subscriber under
9 subparagraph (B)(ii) be reversed, or that
10 the carrier may resubmit a bill for the
11 amount of the credit to the subscriber not-
12 withstanding any discharge under subpara-
13 graph (B)(ii).

14 “(iv) SPEEDY RESOLUTION OF COM-
15 PLAINTS.—The procedure established
16 under this subparagraph shall provide for
17 a determination of each complaint filed
18 under the procedure not later than 6
19 months after filing.

20 “(D) MAINTENANCE OF INFORMATION.—

21 “(i) IN GENERAL.—The Commission
22 shall, by rule, require each executing car-
23 rier to maintain information regarding
24 each alleged violation of this subsection of
25 which the carrier has been notified.

1 “(ii) CONTENTS.—The information
2 required to be maintained pursuant to this
3 paragraph shall include, for each alleged
4 violation of this subsection, the effective
5 date of the change of service involved in
6 the alleged violation, the name of the pro-
7 vider of the service to which the change
8 was made, the name, address, and tele-
9 phone number of the subscriber who was
10 subject to the alleged violation, and the
11 amount of any credit provided under sub-
12 paragraph (B)(ii).

13 “(iii) FORM.—The Commission shall
14 prescribe one or more computer data for-
15 mats for the maintenance of information
16 under this paragraph, which shall be de-
17 signed to facilitate submission and com-
18 pilation pursuant to this subparagraph.

19 “(iv) MONTHLY REPORTS.—Each exe-
20 cuting carrier shall, on not less than a
21 monthly basis, submit the information
22 maintained pursuant to this subparagraph
23 to the Commission.

24 “(v) ACCESS TO INFORMATION.—The
25 Commission shall make the information

1 submitted pursuant to clause (iv) available
2 upon request to any telecommunications
3 carrier. Any telecommunications carrier ob-
4 taining access to such information shall
5 use such information exclusively for the
6 purposes of investigating, filing, or resolv-
7 ing complaints under this section.

8 “(4) CIVIL PENALTIES.—Unless the Commis-
9 sion determines that there are mitigating cir-
10 cumstances, violation of this subsection is punishable
11 by a forfeiture of not less than \$40,000 for the first
12 offense, and not less than \$150,000 for each subse-
13 quent offense.

14 “(5) RECOVERY OF FORFEITURES.—The Com-
15 mission may take such action as may be necessary—

16 “(A) to collect any forfeitures it imposes
17 under this subsection; and

18 “(B) on behalf of any subscriber, to collect
19 any damages awarded the subscriber under this
20 subsection.

21 “(d) APPLICATION TO WIRELESS.—This section does
22 not apply to a provider of commercial mobile service.

23 “(e) COMMISSION REQUIREMENTS.—

24 “(1) SEMIANNUAL REPORTS.—Every 6 months,
25 the Commission shall compile and publish a report

1 ranking telecommunications carriers by the percent-
2 age of verified complaints, excluding those generated
3 by the carrier's unaffiliated resellers, compared to
4 the number of the carrier's changes in a subscriber's
5 selection of a provider of telephone exchange service
6 and telephone toll service.

7 “(2) INVESTIGATION.—If a telecommunications
8 carrier is listed among the 5 worst performers based
9 upon the percentage of verified complaints, excluding
10 those generated by the carrier's unaffiliated resell-
11 ers, compared to its number of carrier selection
12 changes in the semiannual reports 3 times in succes-
13 sion, the Commission shall investigate the carrier's
14 practices regarding subscribers' selections of provid-
15 ers of telephone exchange service and telephone toll
16 service. If the Commission finds that the carrier is
17 misrepresenting adherence to the Code or is willfully
18 and repeatedly changing subscribers' selections of
19 providers, it shall find such carrier to be in violation
20 of this section and shall fine the carrier up to
21 \$1,000,000.

22 “(3) CODE REVIEW.—Every 2 years, the Com-
23 mission shall review the Code to ensure its require-
24 ments adequately protect subscribers from improper

1 changes in a subscriber's selection of a provider of
2 telephone exchange service and telephone toll service.

3 “(f) ACTIONS BY STATES.—

4 “(1) IN GENERAL.—Whenever an attorney gen-
5 eral of any State has reason to believe that the in-
6 terests of the residents of that State have been or
7 are being threatened or adversely affected because
8 any person has violated the Code or subsection (c),
9 or any rule or regulation prescribed by the Commis-
10 sion under subsection (c), the State may bring a
11 civil action on behalf of its residents in an appro-
12 priate district court of the United States to enjoin
13 such violation, to enforce compliance with such
14 Code, subsection, rule, or regulation, to obtain dam-
15 ages on behalf of their residents, or to obtain such
16 further and other relief as the court may deem ap-
17 propriate.

18 “(2) NOTICE.—The State shall serve prior writ-
19 ten notice of any civil action under paragraph (1)
20 upon the Commission and provide the Commission
21 with a copy of its complaint, except that if it is not
22 feasible for the State to provide such prior notice,
23 the State shall serve such notice immediately upon
24 instituting such action. Upon receiving a notice re-
25 specting a civil action, the Commission shall have

1 the right (A) to intervene in such action, (B) upon
2 so intervening, to be heard on all matters arising
3 therein, and (C) to file petitions for appeal.

4 “(3) VENUE.—Any civil action brought under
5 this section in a district court of the United States
6 may be brought in the district wherein the defendant
7 is found or is an inhabitant or transacts business or
8 wherein the violation occurred or is occurring, and
9 process in such cases may be served in any district
10 in which the defendant is an inhabitant or wherever
11 the defendant may be found.

12 “(4) INVESTIGATORY POWERS.—For purposes
13 of bringing any civil action under this section, noth-
14 ing in this Act shall prevent the attorney general
15 from exercising the powers conferred on the attorney
16 general by the laws of such State to conduct inves-
17 tigation or to administer oaths or affirmations or to
18 compel the attendance of witnesses or the production
19 of documentary and other evidence.

20 “(5) EFFECT ON STATE COURT PROCEED-
21 INGS.—Nothing contained in this subsection shall
22 prohibit an authorized State official from proceeding
23 in State court on the basis of an alleged violation of
24 any general civil or criminal statute of such State.

1 “(6) LIMITATION.—Whenever the Commission
2 has instituted a civil action for violation of this sec-
3 tion or any rule or regulation thereunder, no State
4 may, during the pendency of such action instituted
5 by the Commission, subsequently institute a civil ac-
6 tion against any defendant named in the Commis-
7 sion’s complaint for violation of any rule as alleged
8 in the Commission’s complaint.

9 “(7) ACTIONS BY OTHER STATE OFFICIALS.—In
10 addition to actions brought by an attorney general
11 of a State under paragraph (1), such an action may
12 be brought by officers of such State who are author-
13 ized by the State to bring actions in such State for
14 protection of consumers.

15 “(g) STATE LAW NOT PREEMPTED.—

16 “(1) IN GENERAL.—Nothing in this section or
17 in the regulations prescribed under this section shall
18 preempt any State law that imposes requirements,
19 regulations, damages, costs, or penalties on changes
20 in a subscriber’s selection of a provider of telephone
21 exchange service or telephone toll service that—

22 “(A) are less restrictive than those im-
23 posed under this section; or

24 “(B) are not inconsistent with those im-
25 posed under this section, and were enacted

1 prior to the date of enactment of the Tele-
2 communications Competition and Consumer
3 Protection Act of 1998.

4 “(2) EFFECT ON STATE COURT PROCEED-
5 INGS.—Except as provided in subsection (f)(6),
6 nothing contained in this section shall be construed
7 to prohibit an authorized State official from proceed-
8 ing in State court on the basis of an alleged viola-
9 tion of any general civil or criminal statute of such
10 State or any specific civil or criminal statute of such
11 State not preempted by this section.

12 “(h) RULES OF CONSTRUCTION.—

13 “(1) CHANGE INCLUDES INITIAL SELECTION.—
14 For purposes of this section, the initiation of tele-
15 phone toll service to a subscriber by a telecommuni-
16 cations carrier shall be treated as a change in selec-
17 tion of a provider of telephone toll service.

18 “(2) ACTION BY UNAFFILIATED RESELLER NOT
19 IMPUTED TO CARRIER.—No telecommunications car-
20 rier may be found in violation of this section solely
21 on the basis of a violation of this section by an unaf-
22 filiated reseller of that carrier’s services or facilities.

23 “(i) DEFINITIONS.—For purposes of this section:

24 “(1) SUBSCRIBER.—The term ‘subscriber’
25 means the person named on the billing statement or

1 account, or any other person authorized to make
2 changes in the providers of telephone exchange serv-
3 ice or telephone toll service.

4 “(2) EXECUTING CARRIER.—The term ‘execut-
5 ing carrier’ means, with respect to any change in the
6 provider of local exchange service or telephone toll
7 service, the local exchange carrier that executed such
8 change.

9 “(3) ATTORNEY GENERAL.—The term ‘attorney
10 general’ means the chief legal officer of a State.”.

11 (b) NTIA STUDY OF THIRD-PARTY ADMINISTRA-
12 TION.—Within 180 days of enactment of this Act, the Na-
13 tional Telecommunications and Information Administra-
14 tion shall report to the Committee on Commerce of the
15 House of Representatives and the Committee on Com-
16 merce, Science, and Transportation of the Senate on the
17 feasibility and desirability of establishing a neutral third-
18 party administration system to prevent illegal changes in
19 telephone subscriber carrier selections. The study shall in-
20 clude—

21 (1) an analysis of the cost of establishing a sin-
22 gle national or several independent databases or
23 clearinghouses to verify and submit changes in car-
24 rier selections;

1 (2) the additional cost to carriers, per change
2 in carrier selection, to fund the ongoing operation of
3 any or all such independent databases or clearing-
4 houses; and

5 (3) the advantages and disadvantages of utiliz-
6 ing independent databases or clearinghouses for veri-
7 fying and submitting carrier selection changes.

8 **TITLE II—SPAMMING**

9 **SEC. 201. SENSE OF THE CONGRESS.**

10 It is the sense of the Congress that—

11 (1) in order to avoid interference with the rapid
12 development and expansion of commerce over the
13 Internet, the Congress should decline to enact regu-
14 latory legislation with respect to unfair or intrusive
15 practices on the Internet that the private sector can,
16 given a sufficient opportunity, deter or prevent; and

17 (2) it is the responsibility of the private sector
18 to use that opportunity promptly to adopt, imple-
19 ment, and enforce measures to deter and prevent the
20 improper use of unsolicited commercial electronic
21 mail.

TITLE III—GWCS AUCTION DEADLINE

SEC. 301. ELIMINATION OF ARBITRARY AUCTION DEAD- LINE.

Section 309(j)(9) of the Communications Act of 1934 (47 U.S.C. 309(j)(9)) is amended by striking “, not later than 5 years after the date of enactment of this subsection,”.

TITLE IV—REINSTATEMENT OF CERTAIN APPLICANTS

SEC. 401. REINSTATEMENT OF APPLICANTS AS TENTATIVE SELECTEES.

(a) IN GENERAL.—Notwithstanding the order of the Federal Communications Commission in the proceeding described in subsection (b), the Commission shall—

(1) reinstate each applicant as a tentative selectee under the covered rural service area licensing proceeding; and

(2) permit each applicant to amend its application, to the extent necessary to update factual information and to comply with the rules of the Commission, at any time before the Commission’s final licensing action in the covered rural service area licensing proceeding.

1 (b) EXEMPTION FROM PETITIONS TO DENY.—For
 2 purposes of the amended applications filed pursuant to
 3 section 501(a)(2), the provisions of section 309(d)(1) of
 4 the Communications Act of 1934 (47 U.S.C. 309(d)(1))
 5 shall not apply.

6 (c) PROCEEDING.—The proceeding described in this
 7 subsection is the proceeding of the Commission In re Ap-
 8 plications of Cellwave Telephone Services L.P.,
 9 Futurewave General Partners L.P., and Great Western
 10 Cellular Partners, 7 FCC Red No. 19 (1992).

11 **SEC. 402. CONTINUATION OF LICENSE PROCEEDING; FEE**
 12 **ASSESSMENT.**

13 (a) AWARD OF LICENSES.—The Commission shall
 14 award licenses under the covered rural service area licens-
 15 ing proceeding within 90 days after the date of the enact-
 16 ment of this title.

17 (b) SERVICE REQUIREMENTS.—The Commission
 18 shall provide that, as a condition of an applicant receiving
 19 a license pursuant to the covered rural service area licens-
 20 ing proceeding, the applicant shall provide cellular radio-
 21 telephone service to subscribers in accordance with sec-
 22 tions 22.946 and 22.947 of the Commission's rules (47
 23 CFR 22.946, 22.947); except that the time period applica-
 24 ble under section 22.947 of the Commission's rules (or
 25 any successor rule) to the applicants identified in subpara-

1 graphs (A) and (B) of section 404(1) shall be 3 years rath-
 2 er than 5 years and the waiver authority of the Commis-
 3 sion shall apply to such 3-year period.

4 (c) CALCULATION OF LICENSE FEE.—

5 (1) FEE REQUIRED.—The Commission shall es-
 6 tablish a fee for each of the licenses under the cov-
 7 ered rural service area licensing proceeding. In de-
 8 termining the amount of the fee, the Commission
 9 shall consider—

10 (A) the average price paid per person
 11 served in the Commission's Cellular Unserved
 12 Auction (Auction No. 12); and

13 (B) the settlement payments required to be
 14 paid by the permittees pursuant to the consent
 15 decree set forth in the Commission's order, In
 16 re the Tellesis Partners (7 FCC Rcd 3168
 17 (1992)), multiplying such payments by two.

18 (2) NOTICE OF FEE.—Within 30 days after the
 19 date an applicant files the amended application per-
 20 mitted by section 501(a)(2), the Commission shall
 21 notify each applicant of the fee established for the
 22 license associated with its application.

23 (d) PAYMENT FOR LICENSES.—No later than May
 24 31, 2000, each applicant shall pay to the Commission the

1 fee established pursuant to subsection (c) of this section
2 for the license granted under subsection (a).

3 (e) AUCTION AUTHORITY.—If, after the amendment
4 of an application pursuant to section 401(a)(2) of this
5 title, the Commission finds that the applicant is ineligible
6 for grant of a license to provide cellular radiotelephone
7 services for a rural service area or the applicant does not
8 meet the requirements under subsection (b) of this section,
9 the Commission shall grant the license for which the appli-
10 cant is the tentative selectee (pursuant to section
11 401(a)(1)) by competitive bidding pursuant to section
12 309(j) of the Communications Act of 1934 (47 U.S.C.
13 309(j)).

14 **SEC. 403. PROHIBITION OF TRANSFER.**

15 During the 5-year period that begins on the date that
16 an applicant is granted any license pursuant to section
17 401, the Commission may not authorize the transfer or
18 assignment of that license under section 310 of the Com-
19 munications Act of 1934 (47 U.S.C. 310). Nothing in this
20 title may be construed to prohibit any applicant granted
21 a license pursuant to section 401 from contracting with
22 other licensees to improve cellular telephone service.

23 **SEC. 404. DEFINITIONS.**

24 For the purposes of this title, the following defini-
25 tions shall apply:

1 (1) APPLICANT.—The term “applicant”
2 means—

3 (A) Great Western Cellular Partners, a
4 California general partnership chosen by the
5 Commission as tentative selectee for RSA #492
6 on May 4, 1989;

7 (B) Monroe Telephone Services L.P., a
8 Delaware limited partnership chosen by the
9 Commission as tentative selectee for RSA #370
10 on August 24, 1989 (formerly Cellwave Tele-
11 phone Services L.P.); and

12 (C) FutureWave General Partners L.P., a
13 Delaware limited partnership chosen by the
14 Commission as tentative selectee for RSA #615
15 on May 25, 1990.

16 (2) COMMISSION.—The term “Commission”
17 means the Federal Communications Commission.

18 (3) COVERED RURAL SERVICE AREA LICENSING
19 PROCEEDING.—The term “covered rural service area
20 licensing proceeding” means the proceeding of the
21 Commission for the grant of cellular radiotelephone
22 licenses for rural service areas #492 (Minnesota
23 11), #370 (Florida 11), and #615 (Pennsylvania
24 4).

1 (4) TENTATIVE SELECTEE.—The term “ten-
2 tative selectee” means a party that has been selected
3 by the Commission under a licensing proceeding for
4 grant of a license, but has not yet been granted the
5 license because the Commission has not yet deter-
6 mined whether the party is qualified under the Com-
7 mission’s rules for grant of the license.

Passed the House of Representatives October 12,
1998.

Attest:

Clerk.